

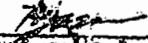
EXHIBIT A

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 29 2022

BY 
NATHANIEL JOHNSON, DEPUTY

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 LUIS PACHECO,

13 Plaintiff,

14 vs.

15 COSTCO WHOLESALE
CORPORATION, CHRIS
16 MARMON, RUSS FLORES,
MARILEE ALAMILLA, and DOES
17 1 to 100, inclusive,

18 Defendants.
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Case No.: **CIV SB 2206722**

**PLAINTIFF LUIS PACHECO'S
COMPLAINT FOR DAMAGES FOR:**

- (1) **DISCRIMINATION ON THE BASIS
OF SEX/GENDER (Govt. Code
§12940(a));**
- (2) **RETALIATION (Govt. Code
§12940(h));**
- (3) **RETALIATION FOR
WHISTLEBLOWING (Lab. Code
§1102.5);**
- (4) **NEGLIGENT SUPERVISION,
HIRING, AND RETENTION
(California Common Law);**
- (5) **WRONGFUL TERMINATION OF
EMPLOYMENT IN VIOLATION OF
PUBLIC POLICY (Govt. Code
§12940(h));**
- (6) **WRONGFUL TERMINATION OF
EMPLOYMENT IN VIOLATION OF
PUBLIC POLICY (Lab. Code §1102.5);**
- (7) **INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS (California
Common Law);**
- (8) **FAILURE TO PROVIDE**

PLAINTIFF'S COMPLAINT FOR DAMAGES

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**COMPENSATION TO EMPLOYEES
NOT AUTHORIZED OR PERMITTED
TO TAKE REQUIRED REST
PERIODS (Lab. Code §226.7);**

**(9) FAILURE TO PAY WAGES UPON
DISCHARGE (Lab. Code §201);**

**(10) STATUTORY PENALTIES (Lab. Code
§203).**

DEMAND FOR JURY TRIAL

1 Plaintiff, Luis Pacheco, alleges, based on personal knowledge and/or information and
2 belief:

3 4 SUMMARY

5 Plaintiff Pacheco was hired by Defendant Costco on October 11, 2017. Plaintiff
6 Pacheco was hired as a seasonal Service Deli Clerk and was eventually hired for fulltime
7 employment in the Food Service department. Plaintiff Pacheco often had to miss his rest
8 break because of the high volume of customers but was not compensated for his missed
9 breaks. On or around May 17, 2021, Plaintiff Pacheco was accused of sexual harassment
10 by two female coworkers. Plaintiff had consensual relationships with the two women and
11 was still on friendly terms with each woman. Plaintiff believes that Defendants Costco,
12 Chris Marmon, Russ Flores, and Marilee Alamilla conducted a sham investigation and
13 automatically terminated Plaintiff Pacheco because he was male. Further, Plaintiff
14 Pacheco occasionally missed his rest breaks and was not compensated for each violation.
15 Plaintiff Pacheco was not paid all his wages at the time of his discharge and such
16 compensation, including applicable penalties for the rest period violations, are unpaid and
17 still owed to Plaintiff. Plaintiff Pacheco brings this action against Defendant(s) for
18 economic, non-economic, compensatory and punitive damages, pursuant to Civil Code
19 Section 3294, prejudgment interest pursuant to Code of Civil Procedure Section 3291,
20 costs, and reasonable attorneys' fees pursuant to Government Code Section 12965(b) and
21 Code of Civil Procedure Section 1021.5.

22 23 PARTIES

24 1. Plaintiff. Luis Pacheco ("Pacheco"), is, and at all times mentioned in this
25 Complaint was, a resident of San Bernardino County, California. Pacheco is also
26 sometimes hereafter referred to as "Plaintiff."

27 2. Defendant. Costco Wholesale Corporation ("Costco") is, and at all times
28 mentioned in this Complaint was, authorized to operate by the State of California and the

1 United States government and authorized and qualified to do business in the County of
 2 San Bernardino. Defendant Costco's place of business, where the following causes of
 3 action took place, was and is in the County of San Bernardino, 1099 E. Hospitality Lane,
 4 San Bernardino, California 92408. Defendant Costco both directly and indirectly
 5 employed Plaintiff Pacheco, as defined under the Fair Employment and Housing Act
 6 ("FEHA") at Government Code section 12926(d).

7 3. Defendant Chris Marmon ("Marmon") is, and at all times mentioned in this
 8 Complaint was, a resident of the County of Fresno. As Defendant Costco's agent and
 9 Warehouse Manager, Defendant Marmon was Plaintiff Pacheco's manager and direct
 10 supervisor, Defendant Marmon both directly and indirectly employed Plaintiff Pacheco,
 11 as defined under FEHA at Government Code section 12926(d).

12 4. Defendant Russ Flores ("Flores") is, and at all times mentioned in this Complaint
 13 was, a resident of the County of Fresno. As Defendant Costco's agent, Defendant Flores
 14 was Plaintiff Pacheco's direct supervisor, Defendant Flores both directly and indirectly
 15 employed Plaintiff Pacheco, as defined under FEHA at Government Code section
 16 12926(d).

17 5. Defendant Marilee Alamilla ("Alamilla") is, and at all times mentioned in this
 18 Complaint was, a resident of the County of Fresno. As Defendant Costco's agent,
 19 Defendant Alamilla was Plaintiff Pacheco's manager and direct supervisor, Defendant
 20 Alamilla both directly and indirectly employed Plaintiff Pacheco, as defined under FEHA
 21 at Government Code section 12926(d).

22 6. Doe Defendants: Defendants Does 1 through 100 are sued under fictitious names
 23 pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on
 24 that basis alleges, that each of the Defendants sued under fictitious names is in some manner
 25 responsible for the wrongs and damages alleged below, in so acting was functioning as the
 26 agent, servant, partner, and employee of all co-Defendants, and in taking the actions
 27 mentioned below was acting within the course and scope of his or her authority as such
 28 agent, servant, partner, and employee, with the permission and consent of the co-

1 Defendants.

2 7. Relationship of Defendants:

3 a. All Defendants, including but not limited to Costco, Marmon, Flores,
4 Alamilla, and all DOE Defendants, directly and/or indirectly employed Plaintiff, as
5 defined under the regulations, statutes and interpreting case law, including but not limited
6 to California Government Code section 12926(d).

7 b. Defendants Costco and all DOE Defendants, inclusive, compelled, coerced,
8 aided, and/or abetted the discrimination, retaliation and harassment alleged throughout,
9 which is prohibited under California Government Code section 12940(i).

10 c. Defendants Marmon, Flores, Alamilla, and all DOE Defendants, inclusive,
11 compelled, coerced, aided, and/or abetted the retaliation and harassment alleged
12 throughout, which is prohibited under California Government Code section 12940(i).

13 d. All Defendants, including but not limited to Costco, Marmon, Flores,
14 Alamilla, and all DOE Defendants, were acting as the agent(s) of all other Defendants and
15 employers, as defined under the regulations, statutes and interpreting case law, including
16 but not limited to California Government Code section 12926(d).

17 e. All actions of all Defendants were taken by employees, supervisors,
18 executives, officers and directors during employment with all Defendants, on behalf of all
19 Defendants, and so engaged in, authorized, ratified and approved of the conduct of all
20 other Defendants.

21 f. Plaintiff is informed and believes, and thereon alleges, that, at all times
22 relevant hereto, Defendants, and each of them, were the principals, agents, servants,
23 employers, employees, partners, joint venturers, predecessors in interest, successors in
24 interest, and/or authorized representatives of each of the other Defendants, and were at all
25 times relevant herein acting within the purpose, course and scope of their agency, service,
26 employment, partnership, joint ventures and/or representation, and were doing so with the
27 knowledge, permission and consent of their principal, employer, partners, joint venturers
28 and co-Defendants, and each of them. Plaintiff further alleges that each and every

1 Defendant was negligent, careless and legally liable in the selection and hiring of each and
 2 every other Defendant as its agent, servant, employee, consultant, assistant, representative,
 3 partner and/or joint venturer.

4 5 **VENUE**

6 8. Venue is proper in this court as the civil rights violations arose under the Fair
 7 Employment and housing Act and Unruh Civil Acts in the State of California, County of
 8 San Bernardino, under California Government Code Section 12965(b). Such provides that
 9 “[t]he superior courts of California shall have jurisdiction of those actions, and the
 10 aggrieved person may file in these courts. An action may be brought in any county in the
 11 state in which the unlawful practice is alleged to have been committed....”

12 13 **FACTS COMMON TO ALL CAUSES OF ACTION**

14 9. Plaintiff’s hiring. Plaintiff Pacheco was employed by Defendant Costco for
 15 approximately four years, from October 11, 2017 through June 1, 2021. Plaintiff Pacheco
 16 originally began his employment with Defendant Costco as seasonal work as a Service
 17 Deli Clerk. On or around June 27, 2018, Defendant Costco rehired him as a fulltime
 18 employee in the food court. His direct supervisors were Defendants Chris Marmon, the
 19 Warehouse Manager, and Marilee Alamilla and Russ Flores, his two supervisors. At all
 20 times relevant herein, Plaintiff Pacheco was a non-exempt employee and entitled to all the
 21 protections of California law, including but not limited to legally required rest breaks and
 22 timely compensation.

23 10. Plaintiff’s job performance. At all times through Plaintiff Pacheco’s employment,
 24 he performed his job duties in an exemplary manner. During his seasonal employment, he
 25 performed his duties so well that he was invited back as a fulltime employee the next
 26 season.

27 11. During Plaintiff Pacheco’s employment with Defendant Costco, he had positive
 28 employee reviews by management. In Plaintiff Pacheco’s employee review on or around

1 June 11, 2019, his manager, Ms. Kamilla (first name unknown), stated,
 2 "Luis...demonstrates safe work practices...[his] behavior is consistent with Costco's code
 3 of ethics, he demonstrates truthfulness and takes responsibility for his actions." Further,
 4 in Plaintiff Pacheco's review from June 24, 2020, another manager, Jeffrey Lee ("Mr.
 5 Lee"), commented, "Luis is trustworthy, and responsible person." Plaintiff Pacheco
 6 performed his duties to the best of his abilities and his honesty and integrity was valued
 7 by his managers.

8 12. Defendant's rest break practices. Plaintiff was subject to Defendant Costco's
 9 corporate practices mandated by corporate offices of Defendant Costco who at times
 10 altered the time records of employees, failed to provide coverage during rest periods, did
 11 not allow rest breaks, and thus required employees, particularly Plaintiff, to work during
 12 rest breaks, and failed to provide accurate information on paycheck stubs in violation of
 13 Labor Code Section 226(a). Plaintiff was forced to miss his breaks several times. Plaintiff
 14 was not provided a 10-minute rest break within the first four hours, or major fraction
 15 thereof. Plaintiff Pacheco was constantly busy adhering to the high-quality standards in
 16 place to serve Defendant Costco's customers. On approximately 25 occasions, he was
 17 forced to forgo his last 15-minute rest break that he was entitled to per Defendant Costco's
 18 policies and the Labor Code. When Plaintiff Pacheco was finally able to check the time,
 19 he often realized he had missed his break. Defendants did not allow Plaintiff Pacheco to
 20 take a break if it meant working overtime, so he was often denied his break altogether.
 21 Plaintiff Pacheco is entitled to approximately 25 hours of pay for each violation as the
 22 statute requires. Plaintiff was subject to the corporate policy and/or practices of not
 23 providing rest breaks and not being paid the applicable penalties for rest period violations,
 24 all of which are unpaid and still owed to Plaintiff.

25 13. Plaintiff's protected status, e.g., gender/sex. On or around May 17, 2021, Plaintiff
 26 Pacheco was informed of two allegations made against him by two separate female
 27 employees for sexual harassment. Plaintiff Pacheco was called into the manager's office
 28 and spoke to Defendant Flores, and another manager named John (last name unknown).

1 Defendant Flores disclosed the names of the two females and began asking Plaintiff
2 Pacheco extremely invasive questions, such as the extent of Plaintiff Pacheco's sexual
3 contact with each female. Plaintiff Pacheco had amicable relationships with his female
4 coworkers. Plaintiff Pacheco had a consensual and brief relationship with Tessa Jones
5 ("Ms. Jones"), one of the female accusers, in approximately 2019, two years ago. Since
6 then, Ms. Jones and Plaintiff Pacheco are still on friendly terms and speak to each other
7 normally. At no time during those two years did Ms. Jones express to Plaintiff Pacheco
8 that she felt he was harassing her. In or around December 2020, the other female accuser,
9 Lindsay Pint ("Ms. Pint"), sent an unsolicited video of herself, topless in a lake, to Plaintiff
10 Pacheco. Ms. Pint playfully told him to keep the video and not to tell anyone. Plaintiff
11 Pacheco and Ms. Pint started a consensual flirtatious relationship but did not progress to
12 an intimate relationship. Ms. Pint continued to speak to Plaintiff Pacheco in a friendly
13 manner at work and at no time expressed that she wanted to change their relationship to
14 be strictly platonic. Plaintiff Pacheco was blindsided by the sexual harassment complaints.
15 Defendant Flores led Plaintiff Pacheco to a private room and told Plaintiff Pacheco to write
16 his statement because this was his only chance to defend himself.

17 14. On or around May 18, 2021, Defendant Alamilla called Plaintiff Pacheco and
18 informed him that he was placed on paid suspension for three days and needed to return
19 to work on May 22, 2021. Plaintiff Pacheco reminded Defendant Alamilla that he had
20 already been approved for a one week vacation and could not report to work on May 22,
21 2021.

22 15. On or around May 30, 2021, Plaintiff Pacheco returned from his suspension and
23 vacation time. Plaintiff Pacheco met with Defendant Marmon regarding the result of the
24 investigation. Defendant Marmon spoke to Plaintiff Pacheco briefly for approximately
25 five minutes and told him that the "evidence suggests" that Plaintiff Pacheco violated a
26 company policy. Defendant Marmon did not explain further and handed documents,
27 including a termination letter, to Plaintiff Pacheco for signature. Plaintiff Pacheco refused
28 to sign his termination letter because Defendant Marmon did not explain how the result

1 was reached. Plaintiff Pacheco believes that Defendants did not conduct a serious
2 investigation.

3 16. Defendant's termination of Plaintiff. On or around June 1, 2021, Plaintiff
4 Pacheco was called into work again and met with Defendant Flores this time. Defendant
5 Flores informed him that he was being officially terminated and presented him with the
6 termination paperwork again. Plaintiff Pacheco refused to sign the paperwork because his
7 questions regarding the investigation were still not being answered. Plaintiff Pacheco
8 believes that Defendant Costco discriminated against his gender and terminated him
9 instead of conducting a real investigation. Plaintiff Pacheco was discriminated against for
10 his gender due to the political climate and "me too" movement. Plaintiff Pacheco believes
11 Defendants automatically chose the females' side without considering his explanation of
12 events because of his gender. As a result, Plaintiff Pacheco was wrongfully terminated.

13 17. On information and belief, Defendant's job action(s) against Plaintiff were
14 motivated by Plaintiff's sex, gender, and/or good faith complaints. Plaintiff believes and
15 alleges that Defendant's true reasons for terminating his employment were his sex, gender,
16 and/or good faith complaints. Defendant failed to pay Plaintiff all wages owed at the time
17 of his termination.

18 18. Economic damages. As a consequence of Defendant's conduct, Plaintiff has
19 suffered and will suffered harm, including, without limitation, lost past and future income
20 and employment benefits, and damage to career, and wages, unpaid expenses, and
21 penalties, as well as interest on unpaid wages at the legal rate from and after each payday
22 that those wages should have been paid, in a sum to be proven at trial.

23 19. Non-Economic damages. As a consequence of Defendant's conduct, Plaintiff has
24 suffered and will suffer psychological and emotional distress, humiliation, and mental and
25 physical pain and anguish, in a sum to be proven at trial.

26 20. Punitive damages. Defendant's conduct constitutes oppression, fraud or malice
27 under California Civil Code Section 3294, so as to entitle Plaintiff to an award of
28 exemplary/punitive damages.

1 a. Malice. Defendant's conduct was done with malice within the meaning of
 2 California Civil Code Section 3294, including that (a) Defendant acted with intent to cause
 3 injury to Plaintiff, and/or acted with reckless disregard toward Plaintiff's injury, including
 4 by terminating and/or taking other adverse job action against Plaintiff based on Plaintiff's
 5 sex, gender, and/or good faith complaints; and/or (b) Defendant's conduct was despicable,
 6 with willful and conscious disregard of Plaintiff's rights, health and safety, including
 7 Plaintiff's right to be free of discrimination, harassment, retaliation, and wrongful
 8 termination.

9 b. Oppression. In addition, and/or alternatively, Defendant's conduct was done
 10 with oppression within the meaning of California Civil Code Section 3294, including that
 11 Defendant's actions against Plaintiff based on Plaintiff's sex, gender, and/or good faith
 12 complaints, was "despicable" and subjected Plaintiff to cruel and unjust hardship, in
 13 knowing disregard of Plaintiff's rights to a workplace free of discrimination, harassment,
 14 retaliation, and wrongful termination.

15 c. Fraud. In addition, and/or alternatively, Defendant's conduct, as alleged, was
 16 fraudulent within the meaning of California Civil Code Section 3294, including that
 17 Defendant asserted false (pretextual) grounds for termination and/or other adverse job
 18 action(s), to thereby harm Plaintiff and deprive Plaintiff of legal rights.

19 21. Attorneys' fees. Plaintiff has incurred and continues to incur legal expenses and
 20 attorneys' fees.

21 22. Exhaustion of administrative remedies. Prior to filing this action, Plaintiff timely
 22 exhausted administrative remedies, by timely filing an administrative complaint with the
 23 Department of Fair Employment and Housing ("DFEH"). Plaintiff received DFEH right
 24 to sue letter dated November 29, 2021.

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FIRST CAUSE OF ACTION

Discrimination on the Basis of Sex/Gender

(Govt. Code §12940(a))

Against Defendant Costco Wholesale Corporation and Does 1 to 100, Inclusive

23. The allegations set forth in paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

24. At all times herein mentioned, FEHA, Government Code section 12940, *et seq.*, was in full force and effect and was binding on Defendants. This statute requires Defendants to refrain from discriminating against any employee on the basis of his or her sex/gender. Within the time provided by law, Plaintiff filed a complaint with the DFEH, in full compliance with administrative requirements, and received a right-to-sue letter.

25. Defendants, through their managers and supervisors, took a number of actions toward Plaintiff Pacheco that exhibited sexist motivations, intentions, and consciousness. Plaintiff believes and on that basis alleges that Defendants had a motivation to terminate his employment because of his sex/gender.

26. The specific acts of which Plaintiff complains are as follows:

a. On or around May 17, 2021, Plaintiff Pacheco was informed of two allegations made against him by two separate female employees for sexual harassment. Plaintiff Pacheco was called into the manager's office and spoke to Defendant Flores, and another manager named John (last name unknown). Defendant Flores disclosed the names of the two females and began asking Plaintiff Pacheco extremely invasive questions, such as the extent of Plaintiff Pacheco's sexual contact with each female. Plaintiff Pacheco had amicable relationships with his female coworkers. Plaintiff Pacheco had a consensual and brief relationship with Ms. Jones, one of the female accusers, in approximately 2019, two years ago. Since then, Ms. Jones and Plaintiff Pacheco are still on friendly terms and speak to each other normally. At no time during those two years did Ms. Jones express to Plaintiff Pacheco that she felt he was harassing her. In or around December 2020, the other female accuser, Ms. Pint, sent an unsolicited video of herself, topless in a lake, to Plaintiff

1 Pacheco. Ms. Pint playfully told him to keep the video and not to tell anyone. Plaintiff
2 Pacheco and Ms. Pint started a consensual flirtatious relationship but did not progress to
3 an intimate relationship. Ms. Pint continued to speak to Plaintiff Pacheco in a friendly
4 manner at work and at no time expressed that she wanted to change their relationship to
5 be strictly platonic. Plaintiff Pacheco was blindsided by the sexual harassment complaints.
6 Defendant Flores led Plaintiff Pacheco to a private room and told Plaintiff Pacheco to write
7 his statement because this was his only chance to defend himself.

8 b. On or around May 18, 2021, Defendant Alamilla called Plaintiff Pacheco and
9 informed him that he was placed on paid suspension for three days and needed to return
10 to work on May 22, 2021. Plaintiff Pacheco reminded Defendant Alamilla that he had
11 already been approved for a one week vacation and could not report to work on May 22,
12 2021.

13 c. On or around May 30, 2021, Plaintiff Pacheco returned from his suspension
14 and vacation time. Plaintiff Pacheco met with Defendant Marmon regarding the result of
15 the investigation. Defendant Marmon spoke to Plaintiff Pacheco briefly for approximately
16 five minutes and told him that the "evidence suggests" that Plaintiff Pacheco violated a
17 company policy. Defendant Marmon did not explain further and handed documents,
18 including a termination letter, to Plaintiff Pacheco for signature. Plaintiff Pacheco refused
19 to sign his termination letter because Defendant Marmon did not explain how the result
20 was reached. Plaintiff Pacheco believes that Defendants did not conduct a serious
21 investigation.

22 d. On or around June 1, 2021, Plaintiff Pacheco was called into work again and
23 met with Defendant Flores this time. Defendant Flores informed him that he was being
24 officially terminated and presented him with the termination paperwork again. Plaintiff
25 Pacheco refused to sign the paperwork because his questions regarding the investigation
26 were still not being answered. Plaintiff Pacheco believes that Defendant Costco
27 discriminated against his gender and terminated him instead of conducting a real
28 investigation. Plaintiff Pacheco was discriminated against for his gender due to the

1 political climate and "me too" movement. Plaintiff Pacheco believes Defendants
2 automatically chose the females' side without considering his explanation of events
3 because of his gender. As a result, Plaintiff Pacheco was wrongfully terminated.

4 27. On the basis of the above, Plaintiff believes and alleges that his sex/gender was
5 a motivating factor in Defendants' termination of his employment.

6 28. As a proximate result of Defendants' willful, knowing, and intentional discrimi-
7 nation against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses
8 of earnings and other employment benefits.

9 29. As a proximate result of Defendants' willful, knowing, and intentional discrimi-
10 nation against Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emo-
11 tional distress, and mental and physical pain and anguish, all to his damage in a sum
12 according to proof.

13 30. Defendants' discrimination was done intentionally, in a malicious, oppressive
14 manner, entitling Plaintiff to punitive damages.

15 31. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
16 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
17 seek leave of court to amend this Complaint when the amounts are fully known.

18 19 **SECOND CAUSE OF ACTION**

20 **Retaliation**

21 **(Government Code §12940(h))**

22 **Against Defendant Costco Wholesale Corporation and DOES 1 to 100, Inclusive**

23 32. The allegations set forth in paragraphs 1 through 31 are re-alleged and incorpo-
24 rated herein by reference.

25 33. At all times herein mentioned, Cal. Govt. Code §12940 *et seq.* were in full force
26 and effect and were binding on Defendants. These sections require Defendants to refrain
27 from retaliating against any employee on the basis of participating in protected activity,
28 his sex/gender, and to take all reasonable steps necessary to prevent discrimination and

1 harassment from occurring.

2 34. Cal. Govt. Code §12940(h) prohibits any employer or persons from discharging
3 or otherwise discriminating against any person because that person has opposed any
4 practices forbidden under this part or because the person has filed a complaint, testified,
5 or assisted in any proceeding under this part FEHA.

6 35. The specific acts of which Plaintiff complains are as follows:

7 a. On or around May 17, 2021, Plaintiff Pacheco was informed of two
8 allegations made against him by two separate female employees for sexual harassment.
9 Plaintiff Pacheco was called into the manager's office and spoke to Defendant Flores, and
10 another manager named John (last name unknown). Defendant Flores disclosed the names
11 of the two females and began asking Plaintiff Pacheco extremely invasive questions, such
12 as the extent of Plaintiff Pacheco's sexual contact with each female. Plaintiff Pacheco had
13 amicable relationships with his female coworkers. Plaintiff Pacheco had a consensual and
14 brief relationship with Ms. Jones, one of the female accusers, in approximately 2019, two
15 years ago. Since then, Ms. Jones and Plaintiff Pacheco are still on friendly terms and speak
16 to each other normally. At no time during those two years did Ms. Jones express to Plaintiff
17 Pacheco that she felt he was harassing her. In or around December 2020, the other female
18 accuser, Ms. Pint, sent an unsolicited video of herself, topless in a lake, to Plaintiff
19 Pacheco. Ms. Pint playfully told him to keep the video and not to tell anyone. Plaintiff
20 Pacheco and Ms. Pint started a consensual flirtatious relationship but did not progress to
21 an intimate relationship. Ms. Pint continued to speak to Plaintiff Pacheco in a friendly
22 manner at work and at no time expressed that she wanted to change their relationship to
23 be strictly platonic. Plaintiff Pacheco was blindsided by the sexual harassment complaints.
24 Defendant Flores led Plaintiff Pacheco to a private room and told Plaintiff Pacheco to write
25 his statement because this was his only chance to defend himself.

26 b. On or around May 18, 2021, Defendant Alamilla called Plaintiff Pacheco and
27 informed him that he was placed on paid suspension for three days and needed to return
28 to work on May 22, 2021. Plaintiff Pacheco reminded Defendant Alamilla that he had

1 already been approved for a one week vacation and could not report to work on May 22,
2 2021.

3 c. On or around May 30, 2021, Plaintiff Pacheco returned from his suspension
4 and vacation time. Plaintiff Pacheco met with Defendant Marmon regarding the result of
5 the investigation. Defendant Marmon spoke to Plaintiff Pacheco briefly for approximately
6 five minutes and told him that the "evidence suggests" that Plaintiff Pacheco violated a
7 company policy. Defendant Marmon did not explain further and handed documents,
8 including a termination letter, to Plaintiff Pacheco for signature. Plaintiff Pacheco refused
9 to sign his termination letter because Defendant Marmon did not explain how the result
10 was reached. Plaintiff Pacheco believes that Defendants did not conduct a serious
11 investigation.

12 d. On or around June 1, 2021, Plaintiff Pacheco was called into work again and
13 met with Defendant Flores this time. Defendant Flores informed him that he was being
14 officially terminated and presented him with the termination paperwork again. Plaintiff
15 Pacheco refused to sign the paperwork because his questions regarding the investigation
16 were still not being answered. Plaintiff Pacheco believes that Defendant Costco
17 discriminated against his gender and terminated him instead of conducting a real
18 investigation. Plaintiff Pacheco was discriminated against for his gender due to the
19 political climate and "me too" movement. Plaintiff Pacheco believes Defendants
20 automatically chose the females' side without considering his explanation of events
21 because of his gender. As a result, Plaintiff Pacheco was wrongfully terminated.

22 e. Further, Plaintiff was subject to Defendant Costco's corporate practices
23 mandated by corporate offices of Defendant Costco who at times altered the time records
24 of employees, failed to provide coverage during rest periods, did not allow rest breaks,
25 and thus required employees, particularly Plaintiff, to work during rest breaks, and failed
26 to provide accurate information on paycheck stubs in violation of Labor Code Section
27 226(a). Plaintiff was forced to miss his breaks several times. Plaintiff was not provided a
28 10-minute rest break within the first four hours, or major fraction thereof. Plaintiff Pacheco

1 was constantly busy adhering to the high-quality standards in place to serve Defendant
 2 Costco's customers. On approximately 25 occasions, he was forced to forgo his last 15-
 3 minute rest break that he was entitled to per Defendant Costco's policies and the Labor
 4 Code. When Plaintiff Pacheco was finally able to check the time, he often realized he had
 5 missed his break. Defendants did not allow Plaintiff Pacheco to take a break if it meant
 6 working overtime, so he was often denied his break altogether. Plaintiff Pacheco is entitled
 7 to approximately 25 hours of pay for each violation as the statute requires. Plaintiff was
 8 subject to the corporate policy and/or practices of not providing rest breaks and not being
 9 paid the applicable penalties for rest period violations, all of which are unpaid and still
 10 owed to Plaintiff.

11 f. Defendants Costco, Marmon, Flores, and Alamilla participated in wage theft
 12 from their employees, in which they blatantly violated wage and hour laws by requiring
 13 employees to work 8-hour shifts without the proper rest breaks. Defendants failed to pay
 14 all wages due to Plaintiff Pacheco for the wage theft that was committed by Defendants
 15 and their agents.

16 36. Plaintiff's sex/gender were motivating factors for the Defendants' retaliation in
 17 refusing to accommodate and terminating him, in addition to his suffering other adverse
 18 employment actions. Based on Defendants' actions, Defendants harassed Plaintiff,
 19 subjected Plaintiff to adverse employment actions, and wrongfully terminated Plaintiff in
 20 retaliation, all based on his sex/gender.

21 37. As a further result of the retaliation, Plaintiff sustained general damages for
 22 mental and emotional distress, anxiety and humiliation, according to proof.

23 38. As a proximate result of Defendants' acts and omissions, Plaintiff has suffered
 24 and continues to suffer general damages consisting of compensation for having to endure
 25 an oppressive work environment, in a sum according to proof.

26 39. As a direct and proximate result of Defendants unlawful conduct, Plaintiff has
 27 suffered and will continue to suffer physical injuries, pain and suffering and mental
 28 anguish and emotional distress. Plaintiff has suffered and continues to suffer other

1 employment benefits. Plaintiff is thereby entitled to general and compensatory damages
2 in amounts to be proven at the time of trial.

3 40. As a direct and proximate cause of the acts alleged above, Plaintiff has had to
4 hire the services of an attorney. Plaintiff has incurred and continues to incur legal
5 expenses, costs, and attorneys' fees, and is entitled to an award of attorneys' fees and
6 costs. Plaintiff is presently unaware of the precise amount of these expenses and fees and
7 prays leave of court to amend this Complaint when the amounts are more fully known.

8 9 **THIRD CAUSE OF ACTION**

10 **Retaliation for Whistleblowing**

11 **(Labor Code §1102.5)**

12 **Against Defendant Costco Wholesale Corporation and DOES 1 to 100, Inclusive**

13 41. The allegations set forth in paragraphs 1 through 40 are re-alleged and
14 incorporated herein by reference.

15 42. At all times herein mentioned, Cal. Labor Code §1102.5 were in full force and
16 effect and were binding on Defendants. This section prohibits retaliation against
17 employees who blow the whistle to a government agency on, or refuses to participate in,
18 violations of laws and regulations in the workplace.

19 43. Violation. Defendants' termination of Plaintiff, and/or other adverse job
20 action(s), violated said policy of the State of California.

21 44. The specific acts of which Plaintiff complains are as follows:

22 a. On or around May 17, 2021, Plaintiff Pacheco was informed of two
23 allegations made against him by two separate female employees for sexual harassment.
24 Plaintiff Pacheco was called into the manager's office and spoke to Defendant Flores, and
25 another manager named John (last name unknown). Defendant Flores disclosed the names
26 of the two females and began asking Plaintiff Pacheco extremely invasive questions, such
27 as the extent of Plaintiff Pacheco's sexual contact with each female. Plaintiff Pacheco had
28 amicable relationships with his female coworkers. Plaintiff Pacheco had a consensual and

1 brief relationship with Ms. Jones, one of the female accusers, in approximately 2019, two
2 years ago. Since then, Ms. Jones and Plaintiff Pacheco are still on friendly terms and speak
3 to each other normally. At no time during those two years did Ms. Jones express to Plaintiff
4 Pacheco that she felt he was harassing her. In or around December 2020, the other female
5 accuser, Ms. Pint, sent an unsolicited video of herself, topless in a lake, to Plaintiff
6 Pacheco. Ms. Pint playfully told him to keep the video and not to tell anyone. Plaintiff
7 Pacheco and Ms. Pint started a consensual flirtatious relationship but did not progress to
8 an intimate relationship. Ms. Pint continued to speak to Plaintiff Pacheco in a friendly
9 manner at work and at no time expressed that she wanted to change their relationship to
10 be strictly platonic. Plaintiff Pacheco was blindsided by the sexual harassment complaints.
11 Defendant Flores led Plaintiff Pacheco to a private room and told Plaintiff Pacheco to write
12 his statement because this was his only chance to defend himself.

13 b. On or around May 18, 2021, Defendant Alamilla called Plaintiff Pacheco and
14 informed him that he was placed on paid suspension for three days and needed to return
15 to work on May 22, 2021. Plaintiff Pacheco reminded Defendant Alamilla that he had
16 already been approved for a one week vacation and could not report to work on May 22,
17 2021.

18 c. On or around May 30, 2021, Plaintiff Pacheco returned from his suspension
19 and vacation time. Plaintiff Pacheco met with Defendant Marmon regarding the result of
20 the investigation. Defendant Marmon spoke to Plaintiff Pacheco briefly for approximately
21 five minutes and told him that the "evidence suggests" that Plaintiff Pacheco violated a
22 company policy. Defendant Marmon did not explain further and handed documents,
23 including a termination letter, to Plaintiff Pacheco for signature. Plaintiff Pacheco refused
24 to sign his termination letter because Defendant Marmon did not explain how the result
25 was reached. Plaintiff Pacheco believes that Defendants did not conduct a serious
26 investigation.

27 d. On or around June 1, 2021, Plaintiff Pacheco was called into work again and
28 met with Defendant Flores this time. Defendant Flores informed him that he was being

1 officially terminated and presented him with the termination paperwork again. Plaintiff
 2 Pacheco refused to sign the paperwork because his questions regarding the investigation
 3 were still not being answered. Plaintiff Pacheco believes that Defendant Costco
 4 discriminated against his gender and terminated him instead of conducting a real
 5 investigation. Plaintiff Pacheco was discriminated against for his gender due to the
 6 political climate and "me too" movement. Plaintiff Pacheco believes Defendants
 7 automatically chose the females' side without considering his explanation of events
 8 because of his gender and retaliated against him for resisting their discriminatory practices.
 9 As a result, Plaintiff Pacheco was wrongfully terminated.

10 e. Plaintiff was subject to Defendant Costco's corporate practices mandated by
 11 corporate offices of Defendant Costco who at times altered the time records of employees,
 12 failed to provide coverage during rest periods, did not allow rest breaks, and thus required
 13 employees, particularly Plaintiff, to work during rest breaks, and failed to provide accurate
 14 information on paycheck stubs in violation of Labor Code Section 226(a). Plaintiff was
 15 forced to miss his breaks several times. Plaintiff was not provided a 10-minute rest break
 16 within the first four hours, or major fraction thereof. Plaintiff Pacheco was constantly busy
 17 adhering to the high-quality standards in place to serve Defendant Costco's customers. On
 18 approximately 25 occasions, he was forced to forgo his last 15-minute rest break that he
 19 was entitled to per Defendant Costco's policies and the Labor Code. When Plaintiff
 20 Pacheco was finally able to check the time, he often realized he had missed his break.
 21 Defendants did not allow Plaintiff Pacheco to take a break if it meant working overtime,
 22 so he was often denied his break altogether. Plaintiff Pacheco believes Defendants
 23 retaliated against his requests to take a break. Plaintiff was subject to the corporate policy
 24 and/or practices of not providing rest breaks and not being paid the applicable penalties
 25 for rest period violations, all of which are unpaid and still owed to Plaintiff.

26 f. Plaintiff Pacheco believes and alleges that Defendants' true reasons for
 27 terminating his employment were his sex/gender and whistleblowing. Defendants failed
 28 to pay Plaintiff Pacheco all wages owed at the time of his termination. Defendants Costco,

1 Marmon, Flores, and Alamilla participated in wage theft from their employees, in which
 2 they blatantly violated wage and hour laws by requiring employees to work 8-hour shifts
 3 without the proper rest breaks. Defendants failed to pay all wages due to Plaintiff Pacheco
 4 for the wage theft that was committed by Defendants and their agents.

5 45. Plaintiff's complaints of labor violations were motivating factors for Defendants'
 6 decision to terminate him, in addition to his suffering other adverse employment actions.
 7 Defendants treated Plaintiff significantly worse than his co-workers because he made
 8 Defendants aware of the illegal safety hazards.

9 46. As a proximate result of Defendants' termination of Plaintiff's employment in
 10 violation of fundamental public policies, Plaintiff has suffered and continues to suffer
 11 humiliation, emotional distress, and mental and physical pain and anguish, all to his
 12 damage in a sum according to proof.

13 47. As a result of Defendants' wrongful termination of Plaintiff's employment,
 14 Plaintiff has suffered general and special damages in sums according to proof.

15 48. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
 16 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
 17 seek leave of court to amend this Complaint when the amounts are fully known.

18 49. Defendants' wrongful termination of Plaintiff's employment was done
 19 intentionally, in a malicious, oppressive manner, entitling Plaintiff to punitive damages.

21 **FOURTH CAUSE OF ACTION**

22 **Negligent Supervision, Hiring, and Retention**

23 **(California Common Law)**

24 **Against Defendant Costco Wholesale Corporation and DOES 1 to 100, Inclusive**

25 50. The allegations set forth in paragraphs 1 through 49 are re-alleged and incorpo-
 26 rated herein by reference.

27 51. As alleged herein, Defendants and each of them, and/or their managerial
 28 employees/agents/employees knew or reasonably should have known, that employees of

1 Defendant Costco individually and together in varying combinations, were engaging in
2 the conduct set forth above.

3 52. Defendants knew of or should and have known that employees, including but not
4 limited to Individual Defendants, had a previous history of engaging in unlawful and/or
5 dangerous conduct that could cause injury to Plaintiff and others and failed to do anything
6 to prevent such injury.

7 53. The specific acts of which Plaintiff complains are as follows:

8 a. Defendant Costco knew that Defendants Marmon, Flores, and Alamilla had
9 a history of targeting employees because of their sex/gender and/or whistleblowing
10 employees but continued to ratify their conduct.

11 b. On or around May 17, 2021, Plaintiff Pacheco was informed of two
12 allegations made against him by two separate female employees for sexual harassment.
13 Plaintiff Pacheco was called into the manager's office and spoke to Defendant Flores, and
14 another manager named John (last name unknown). Defendant Flores disclosed the names
15 of the two females and began asking Plaintiff Pacheco extremely invasive questions, such
16 as the extent of Plaintiff Pacheco's sexual contact with each female. Plaintiff Pacheco had
17 amicable relationships with his female coworkers. Plaintiff Pacheco had a consensual and
18 brief relationship with Ms. Jones, one of the female accusers, in approximately 2019, two
19 years ago. Since then, Ms. Jones and Plaintiff Pacheco are still on friendly terms and speak
20 to each other normally. At no time during those two years did Ms. Jones express to Plaintiff
21 Pacheco that she felt he was harassing her. In or around December 2020, the other female
22 accuser, Ms. Pint, sent an unsolicited video of herself, topless in a lake, to Plaintiff
23 Pacheco. Ms. Pint playfully told him to keep the video and not to tell anyone. Plaintiff
24 Pacheco and Ms. Pint started a consensual flirtatious relationship but did not progress to
25 an intimate relationship. Ms. Pint continued to speak to Plaintiff Pacheco in a friendly
26 manner at work and at no time expressed that she wanted to change their relationship to
27 be strictly platonic. Plaintiff Pacheco was blindsided by the sexual harassment complaints.
28 Defendant Flores led Plaintiff Pacheco to a private room and told Plaintiff Pacheco to write

1 his statement because this was his only chance to defend himself.

2 c. On or around May 18, 2021, Defendant Alamilla called Plaintiff Pacheco and
3 informed him that he was placed on paid suspension for three days and needed to return
4 to work on May 22, 2021. Plaintiff Pacheco reminded Defendant Alamilla that he had
5 already been approved for a one week vacation and could not report to work on May 22,
6 2021.

7 d. On or around May 30, 2021, Plaintiff Pacheco returned from his suspension
8 and vacation time. Plaintiff Pacheco met with Defendant Marmon regarding the result of
9 the investigation. Defendant Marmon spoke to Plaintiff Pacheco briefly for approximately
10 five minutes and told him that the "evidence suggests" that Plaintiff Pacheco violated a
11 company policy. Defendant Marmon did not explain further and handed documents,
12 including a termination letter, to Plaintiff Pacheco for signature. Plaintiff Pacheco refused
13 to sign his termination letter because Defendant Marmon did not explain how the result
14 was reached. Plaintiff Pacheco believes that Defendants did not conduct a serious
15 investigation.

16 e. On or around June 1, 2021, Plaintiff Pacheco was called into work again and
17 met with Defendant Flores this time. Defendant Flores informed him that he was being
18 officially terminated and presented him with the termination paperwork again. Plaintiff
19 Pacheco refused to sign the paperwork because his questions regarding the investigation
20 were still not being answered. Plaintiff Pacheco believes that Defendant Costco
21 discriminated against his gender and terminated him instead of conducting a real
22 investigation. Plaintiff Pacheco was discriminated against for his gender due to the
23 political climate and "me too" movement. Plaintiff Pacheco believes Defendants
24 automatically chose the females' side without considering his explanation of events
25 because of his gender. As a result, Plaintiff Pacheco was wrongfully terminated.

26 f. Plaintiff was subject to Defendant Costco's corporate practices mandated by
27 corporate offices of Defendant Costco who at times altered the time records of employees,
28 failed to provide coverage during rest periods, did not allow rest breaks, and thus required

1 employees, particularly Plaintiff, to work during rest breaks, and failed to provide accurate
 2 information on paycheck stubs in violation of Labor Code Section 226(a). Plaintiff was
 3 forced to miss his breaks several times. Plaintiff was not provided a 10-minute rest break
 4 within the first four hours, or major fraction thereof. Plaintiff Pacheco was constantly busy
 5 adhering to the high-quality standards in place to serve Defendant Costco's customers. On
 6 approximately 25 occasions, he was forced to forgo his last 15-minute rest break that he
 7 was entitled to per Defendant Costco's policies and the Labor Code. When Plaintiff
 8 Pacheco was finally able to check the time, he often realized he had missed his break.
 9 Defendants did not allow Plaintiff Pacheco to take a break if it meant working overtime,
 10 so he was often denied his break altogether. Plaintiff Pacheco is entitled to approximately
 11 25 hours of pay for each violation as the statute requires. Plaintiff was subject to the
 12 corporate policy and/or practices of not providing rest breaks and not being paid the
 13 applicable penalties for rest period violations, all of which are unpaid and still owed to
 14 Plaintiff.

15 g. Plaintiff Pacheco believes and alleges that Defendants' true reasons for
 16 terminating his employment were his sex/gender and whistleblowing. Defendants failed
 17 to pay Plaintiff Pacheco all wages owed at the time of his termination. Further, Defendants
 18 Costco, Marmon, Flores, and Alamilla participated in wage theft from their employees, in
 19 which they blatantly violated wage and hour laws by requiring employees to work 8-hour
 20 shifts without the proper rest and meal breaks. Defendants failed to pay all wages due to
 21 Plaintiff Pacheco for the wage theft that was committed by Defendants and their agents.

22 54. At all relevant times Defendant Costco, and/or their agents/employees knew or
 23 reasonably should have known that the conduct and omissions set forth above violated
 24 Plaintiff's rights under state law.

25 55. Defendant Costco recognized their employees could not discriminate, harass, or
 26 retaliate against other employees. Defendants knew that Defendants Marmon, Flores, and
 27 Alamilla had a history of targeting employees because of their sex/gender and/or
 28 employees who made good faith complaints about illegal labor and safety violations.

1 Despite this knowledge, Defendant Costco allowed Defendants Marmon, Flores, and
 2 Alamilla to discriminate, harass and retaliate against Plaintiff without repercussion.
 3 Defendants then wrongfully terminated Plaintiff in retaliation to his complaints and due
 4 to his sex/gender.

5 56. At all relevant times, Defendants, and/or their agents/employees knew or
 6 reasonably should have known that the conduct set forth above would and did proximately
 7 result in emotional distress to Plaintiff. The injuries include but are not limited to anxiety,
 8 depression, and humiliation.

9 57. At all relevant times, Defendant Costco, and/or its agents/employees, knew or
 10 reasonably should have known that unless they intervened to protect Plaintiff, and to
 11 adequately supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the
 12 conduct of Defendants Marmon, Flores, and Alamilla as set forth above, the remaining
 13 Defendants and employees perceived the conduct and omissions as being ratified and
 14 condoned.

15 58. At all relevant times, the negligent failure of the Defendants to protect Plaintiff,
 16 and to supervise, prohibit, control, regulate, discipline, and/or otherwise penalize
 17 adequately the conduct and omissions of the other employees violated Plaintiff's rights
 18 under state statutes and common law, as alleged herein.

19 20 **FIFTH CAUSE OF ACTION**

21 **Wrongful Termination in Violation of Public Policy**

22 **(Government Code §12940(h))**

23 **Against Defendant Costco Wholesale Corporation and DOES 1 to 100, Inclusive**

24 59. The allegations set forth in paragraphs 1 through 58 are re-alleged and incorpo-
 25 rated herein by reference.

26 60. Public Policy. Public policy of the State of California, as provided by statutes
 27 e.g., California Government Code Section 12940(h), which prohibits job discrimination,
 28 harassment, and retaliation on the basis of an employee's sex/gender.

1 61. Violation. Defendants' wrongful termination of Plaintiff, and/or other adverse
2 job action(s), violation said policy(ies) of the State of California.

3 62. The specific acts of which Plaintiff complains are as follows:

4 a. During Plaintiff Pacheco's employment with Defendant Costco, he had
5 positive employee reviews by management. In Plaintiff Pacheco's employee review on or
6 around June 11, 2019, his manager, Ms. Kamilla, stated, "Luis...demonstrates safe work
7 practices...[his] behavior is consistent with Costco's code of ethics, he demonstrates
8 truthfulness and takes responsibility for his actions." Further, in Plaintiff Pacheco's review
9 from June 24, 2020, another manager, Mr. Lee, commented, "Luis is trustworthy, and
10 responsible person." Plaintiff Pacheco performed his duties to the best of his abilities and
11 his honesty and integrity was valued by his managers.

12 b. On or around May 17, 2021, Plaintiff Pacheco was informed of two
13 allegations made against him by two separate female employees for sexual harassment.
14 Plaintiff Pacheco was called into the manager's office and spoke to Defendant Flores, and
15 another manager named John (last name unknown). Defendant Flores disclosed the names
16 of the two females and began asking Plaintiff Pacheco extremely invasive questions, such
17 as the extent of Plaintiff Pacheco's sexual contact with each female. Plaintiff Pacheco had
18 amicable relationships with his female coworkers. Plaintiff Pacheco had a consensual and
19 brief relationship with Ms. Jones, one of the female accusers, in approximately 2019, two
20 years ago. Since then, Ms. Jones and Plaintiff Pacheco are still on friendly terms and speak
21 to each other normally. At no time during those two years did Ms. Jones express to Plaintiff
22 Pacheco that she felt he was harassing her. In or around December 2020, the other female
23 accuser, Ms. Pint, sent an unsolicited video of herself, topless in a lake, to Plaintiff
24 Pacheco. Ms. Pint playfully told him to keep the video and not to tell anyone. Plaintiff
25 Pacheco and Ms. Pint started a consensual flirtatious relationship but did not progress to
26 an intimate relationship. Ms. Pint continued to speak to Plaintiff Pacheco in a friendly
27 manner at work and at no time expressed that she wanted to change their relationship to
28 be strictly platonic. Plaintiff Pacheco was blindsided by the sexual harassment complaints.

1 Defendant Flores led Plaintiff Pacheco to a private room and told Plaintiff Pacheco to write
2 his statement because this was his only chance to defend himself.

3 c. On or around May 18, 2021, Defendant Alamilla called Plaintiff Pacheco and
4 informed him that he was placed on paid suspension for three days and needed to return
5 to work on May 22, 2021. Plaintiff Pacheco reminded Defendant Alamilla that he had
6 already been approved for a one week vacation and could not report to work on May 22,
7 2021.

8 d. On or around May 30, 2021, Plaintiff Pacheco returned from his suspension
9 and vacation time. Plaintiff Pacheco met with Defendant Marmon regarding the result of
10 the investigation. Defendant Marmon spoke to Plaintiff Pacheco briefly for approximately
11 five minutes and told him that the "evidence suggests" that Plaintiff Pacheco violated a
12 company policy. Defendant Marmon did not explain further and handed documents,
13 including a termination letter, to Plaintiff Pacheco for signature. Plaintiff Pacheco refused
14 to sign his termination letter because Defendant Marmon did not explain how the result
15 was reached. Plaintiff Pacheco believes that Defendants did not conduct a serious
16 investigation.

17 e. On or around June 1, 2021, Plaintiff Pacheco was called into work again and
18 met with Defendant Flores this time. Defendant Flores informed him that he was being
19 officially terminated and presented him with the termination paperwork again. Plaintiff
20 Pacheco refused to sign the paperwork because his questions regarding the investigation
21 were still not being answered. Plaintiff Pacheco believes that Defendant Costco
22 discriminated against his gender and terminated him instead of conducting a real
23 investigation. Plaintiff Pacheco was discriminated against for his gender due to the
24 political climate and "me too" movement. Plaintiff Pacheco believes Defendants
25 automatically chose the females' side without considering his explanation of events
26 because of his gender. As a result, Plaintiff Pacheco was wrongfully terminated.

27 f. Plaintiff was subject to Defendant Costco's corporate practices mandated by
28 corporate offices of Defendant Costco who at times altered the time records of employees,

1 failed to provide coverage during rest periods, did not allow rest breaks, and thus required
2 employees, particularly Plaintiff, to work during rest breaks, and failed to provide accurate
3 information on paycheck stubs in violation of Labor Code Section 226(a). Plaintiff was
4 forced to miss his breaks several times. Plaintiff was not provided a 10-minute rest break
5 within the first four hours, or major fraction thereof. Plaintiff Pacheco was constantly busy
6 adhering to the high-quality standards in place to serve Defendant Costco's customers. On
7 approximately 25 occasions, he was forced to forgo his last 15-minute rest break that he
8 was entitled to per Defendant Costco's policies and the Labor Code. When Plaintiff
9 Pacheco was finally able to check the time, he often realized he had missed his break.
10 Defendants did not allow Plaintiff Pacheco to take a break if it meant working overtime,
11 so he was often denied his break altogether. Plaintiff Pacheco is entitled to approximately
12 25 hours of pay for each violation as the statute requires. Plaintiff was subject to the
13 corporate policy and/or practices of not providing rest breaks and not being paid the
14 applicable penalties for rest period violations, all of which are unpaid and still owed to
15 Plaintiff.

16 g. Plaintiff Pacheco believes and alleges that Defendants' true reasons for
17 terminating his employment were his sex/gender and whistleblowing. Defendants failed
18 to pay Plaintiff Pacheco all wages owed at the time of his termination. Plaintiff Pacheco
19 further believes that Defendants terminated Plaintiff Pacheco in order to avoid
20 contributing to his health insurance premiums. Further, Defendants COSTCO, Marmon,
21 Flores, and Alamilla participated in wage theft from their employees, in which they
22 blatantly violated wage and hour laws by requiring employees to work 8-hour shifts
23 without the proper rest and meal breaks. Defendants failed to pay all wages due to Plaintiff
24 Pacheco for the wage theft that was committed by Defendants and their agents.

25 63. As a proximate result of Defendants' wrongful termination of Plaintiff's
26 employment in violation of fundamental public policies, Plaintiff has suffered and
27 continues to suffer humiliation, emotional distress, and mental and physical pain and
28 anguish, all to his damage in a sum according to proof.

1 64. As a result of Defendants' wrongful termination of Plaintiff's employment,
2 Plaintiff has suffered general and special damages in sums according to proof.

3 65. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
4 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
5 seek leave of court to amend this Complaint when the amounts are fully known.

6 66. Defendants' wrongful termination of Plaintiff's employment was done inten-
7 tionally, in a malicious, oppressive manner, entitling Plaintiff to punitive damages.

8
9 **SIXTH CAUSE OF ACTION**

10 **Wrongful Termination in Violation of Public Policy**

11 **(Labor Code §1102.5)**

12 **Against Defendant Costco Wholesale Corporation and DOES 1 to 100, Inclusive**

13 67. The allegations set forth in paragraphs 1 through 112 are re-alleged and incorpo-
14 rated herein by reference.

15 68. Public Policy. Public policy of the State of California, as provided by statutes
16 e.g., California Labor Code Section 1102.5, which prohibits an employer from retaliating
17 against an employee for disclosing information, or believing the employee to have or may
18 have disclosed information, to a government or law enforcement agency, to a person with
19 authority over the employee or another employee who has the authority to investigate,
20 discover, or correct the violation or noncompliance, or for providing information to, or
21 testifying before, any public body conducting an investigation, hearing, or inquiry, if the
22 employee has reasonable cause to believe that the information discloses a violation of state
23 or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
24 regulation, regardless of whether disclosing the information is part of the employee's job
25 duties.

26 69. Violation. Defendants' wrongful termination of Plaintiff, and/or other adverse
27 job action(s), violation said policy(ies) of the State of California.

28 70. The specific acts of which Plaintiff complains are as follows:

1 a. During Plaintiff Pacheco's employment with Defendant Costco, he had
 2 positive employee reviews by management. In Plaintiff Pacheco's employee review on or
 3 around June 11, 2019, his manager, Ms. Kamilla, stated, "Luis...demonstrates safe work
 4 practices...[his] behavior is consistent with Costco's code of ethics, he demonstrates
 5 truthfulness and takes responsibility for his actions." Further, in Plaintiff Pacheco's review
 6 from June 24, 2020, another manager, Mr. Lee, commented, "Luis is trustworthy, and
 7 responsible person." Plaintiff Pacheco performed his duties to the best of his abilities and
 8 his honesty and integrity was valued by his managers.

9 b. On or around May 17, 2021, Plaintiff Pacheco was informed of two
 10 allegations made against him by two separate female employees for sexual harassment.
 11 Plaintiff Pacheco was called into the manager's office and spoke to Defendant Flores, and
 12 another manager named John (last name unknown). Defendant Flores disclosed the names
 13 of the two females and began asking Plaintiff Pacheco extremely invasive questions, such
 14 as the extent of Plaintiff Pacheco's sexual contact with each female. Plaintiff Pacheco had
 15 amicable relationships with his female coworkers. Plaintiff Pacheco had a consensual and
 16 brief relationship with Ms. Jones, one of the female accusers, in approximately 2019, two
 17 years ago. Since then, Ms. Jones and Plaintiff Pacheco are still on friendly terms and speak
 18 to each other normally. At no time during those two years did Ms. Jones express to Plaintiff
 19 Pacheco that she felt he was harassing her. In or around December 2020, the other female
 20 accuser, Ms. Pint, sent an unsolicited video of herself, topless in a lake, to Plaintiff
 21 Pacheco. Ms. Pint playfully told him to keep the video and not to tell anyone. Plaintiff
 22 Pacheco and Ms. Pint started a consensual flirtatious relationship but did not progress to
 23 an intimate relationship. Ms. Pint continued to speak to Plaintiff Pacheco in a friendly
 24 manner at work and at no time expressed that she wanted to change their relationship to
 25 be strictly platonic. Plaintiff Pacheco was blindsided by the sexual harassment complaints.
 26 Defendant Flores led Plaintiff Pacheco to a private room and told Plaintiff Pacheco to write
 27 his statement because this was his only chance to defend himself.

28 c. On or around May 18, 2021, Defendant Alamilla called Plaintiff Pacheco and

1 informed him that he was placed on paid suspension for three days and needed to return
2 to work on May 22, 2021. Plaintiff Pacheco reminded Defendant Alamilla that he had
3 already been approved for a one week vacation and could not report to work on May 22,
4 2021.

5 d. On or around May 30, 2021, Plaintiff Pacheco returned from his suspension
6 and vacation time. Plaintiff Pacheco met with Defendant Marmon regarding the result of
7 the investigation. Defendant Marmon spoke to Plaintiff Pacheco briefly for approximately
8 five minutes and told him that the "evidence suggests" that Plaintiff Pacheco violated a
9 company policy. Defendant Marmon did not explain further and handed documents,
10 including a termination letter, to Plaintiff Pacheco for signature. Plaintiff Pacheco refused
11 to sign his termination letter because Defendant Marmon did not explain how the result
12 was reached. Plaintiff Pacheco believes that Defendants did not conduct a serious
13 investigation.

14 e. On or around June 1, 2021, Plaintiff Pacheco was called into work again and
15 met with Defendant Flores this time. Defendant Flores informed him that he was being
16 officially terminated and presented him with the termination paperwork again. Plaintiff
17 Pacheco refused to sign the paperwork because his questions regarding the investigation
18 were still not being answered. Plaintiff Pacheco believes that Defendant Costco
19 discriminated against his gender and terminated him instead of conducting a real
20 investigation. Plaintiff Pacheco was discriminated against for his gender due to the
21 political climate and "me too" movement. Plaintiff Pacheco believes Defendants
22 automatically chose the females' side without considering his explanation of events
23 because of his gender. As a result, Plaintiff Pacheco was wrongfully terminated.

24 f. Plaintiff was subject to Defendant Costco's corporate practices mandated by
25 corporate offices of Defendant Costco who at times altered the time records of employees,
26 failed to provide coverage during rest periods, did not allow rest breaks, and thus required
27 employees, particularly Plaintiff, to work during rest breaks, and failed to provide accurate
28 information on paycheck stubs in violation of Labor Code Section 226(a). Plaintiff was

1 forced to miss his breaks several times. Plaintiff was not provided a 10-minute rest break
 2 within the first four hours, or major fraction thereof. Plaintiff Pacheco was constantly busy
 3 adhering to the high-quality standards in place to serve Defendant Costco's customers. On
 4 approximately 25 occasions, he was forced to forgo his last 15-minute rest break that he
 5 was entitled to per Defendant Costco's policies and the Labor Code. When Plaintiff
 6 Pacheco was finally able to check the time, he often realized he had missed his break.
 7 Defendants did not allow Plaintiff Pacheco to take a break if it meant working overtime,
 8 so he was often denied his break altogether. Plaintiff Pacheco is entitled to approximately
 9 25 hours of pay for each violation as the statute requires. Plaintiff was subject to the
 10 corporate policy and/or practices of not providing rest breaks and not being paid the
 11 applicable penalties for rest period violations, all of which are unpaid and still owed to
 12 Plaintiff.

13 g. Plaintiff Pacheco believes and alleges that Defendants' true reasons for
 14 terminating his employment were his sex/gender and whistleblowing. Defendants failed
 15 to pay Plaintiff Pacheco all wages owed at the time of his termination. Plaintiff Pacheco
 16 further believes that Defendants terminated Plaintiff Pacheco in order to avoid
 17 contributing to his health insurance premiums. Further, Defendants COSTCO, Marmon,
 18 Flores, and Alamilla participated in wage theft from their employees, in which they
 19 blatantly violated wage and hour laws by requiring employees to work 8-hour shifts
 20 without the proper rest breaks. Defendants failed to pay all wages due to Plaintiff Pacheco
 21 for the wage theft that was committed by Defendants and their agents.

22 71. As a proximate result of Defendants' wrongful termination of Plaintiff's
 23 employment in violation of fundamental public policies, Plaintiff has suffered and
 24 continues to suffer humiliation, emotional distress, and mental and physical pain and
 25 anguish, all to his damage in a sum according to proof.

26 72. As a result of Defendants' wrongful termination of Plaintiff's employment,
 27 Plaintiff has suffered general and special damages in sums according to proof.

28 73. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.

1 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
2 seek leave of court to amend this Complaint when the amounts are fully known.

3 74. Defendants' wrongful termination of Plaintiff's employment was done inten-
4 tionally, in a malicious, oppressive manner, entitling Plaintiff to punitive damages.

5
6 **SEVENTH CAUSE OF ACTION**

7 **Intentional Infliction of Emotional Distress**

8 **(California Common Law)**

9 **Against All Defendants Inclusive of DOES 1 to 100**

10 75. The allegations set forth in paragraphs 1 through 74 are re-alleged and incorpo-
11 rated herein by reference.

12 76. Defendants' retaliatory, harassing, and discriminatory actions against Plaintiff
13 during his employment were severe and outrageous misconduct and caused Plaintiff
14 extreme emotional distress.

15 77. The specific acts of which Plaintiff complains are as follows:

16 a. Plaintiff Pacheco, a 27- year old, Hispanic man, was employed by Defendant
17 Costco for over three years. Plaintiff Pacheco originally began his employment with
18 Defendant Costco on or around October 11, 2017, where he was hired for seasonal work
19 as a Service Deli Clerk. On or around June 27, 2018, Defendant Costco rehired him for
20 Food Service in the food court because Plaintiff Pacheco performed his duties in an
21 exemplary manner during his seasonal employment. During his employment, Plaintiff
22 Pacheco reported to Defendants Chris Marmon, the Warehouse Manager, and Marilee
23 Alamilla and Russ Flores, his two supervisors.

24 b. During Plaintiff Pacheco's employment with Defendant Costco, he had
25 positive employee reviews by management. In Plaintiff Pacheco's employee review on or
26 around June 11, 2019, his manager, Ms. Kamilla, stated, "Luis...demonstrates safe work
27 practices...[his] behavior is consistent with Costco's code of ethics, he demonstrates
28 truthfulness and takes responsibility for his actions." Further, in Plaintiff Pacheco's review

1 from June 24, 2020, another manager, Mr. Lee, commented, "Luis is trustworthy, and
2 responsible person." Plaintiff Pacheco performed his duties to the best of his abilities and
3 his honesty and integrity was valued by his managers.

4 c. On or around May 17, 2021, Plaintiff Pacheco was informed of two
5 allegations made against him by two separate female employees for sexual harassment.
6 Plaintiff Pacheco was called into the manager's office and spoke to Defendant Flores, and
7 another manager named John (last name unknown). Defendant Flores disclosed the names
8 of the two females and began asking Plaintiff Pacheco extremely invasive questions, such
9 as the extent of Plaintiff Pacheco's sexual contact with each female. Plaintiff Pacheco had
10 amicable relationships with his female coworkers. Plaintiff Pacheco had a consensual and
11 brief relationship with Ms. Jones, one of the female accusers, in approximately 2019, two
12 years ago. Since then, Ms. Jones and Plaintiff Pacheco are still on friendly terms and speak
13 to each other normally. At no time during those two years did Ms. Jones express to Plaintiff
14 Pacheco that she felt he was harassing her. In or around December 2020, the other female
15 accuser, Ms. Pint, sent an unsolicited video of herself, topless in a lake, to Plaintiff
16 Pacheco. Ms. Pint playfully told him to keep the video and not to tell anyone. Plaintiff
17 Pacheco and Ms. Pint started a consensual flirtatious relationship but did not progress to
18 an intimate relationship. Ms. Pint continued to speak to Plaintiff Pacheco in a friendly
19 manner at work and at no time expressed that she wanted to change their relationship to
20 be strictly platonic. Plaintiff Pacheco was blindsided by the sexual harassment complaints.
21 Defendant Flores led Plaintiff Pacheco to a private room and told Plaintiff Pacheco to write
22 his statement because this was his only chance to defend himself.

23 d. On or around May 18, 2021, Defendant Alamilla called Plaintiff Pacheco and
24 informed him that he was placed on paid suspension for three days and needed to return
25 to work on May 22, 2021. Plaintiff Pacheco reminded Defendant Alamilla that he had
26 already been approved for a one week vacation and could not report to work on May 22,
27 2021.

28 e. On or around May 30, 2021, Plaintiff Pacheco returned from his suspension

1 and vacation time. Plaintiff Pacheco met with Defendant Marmon regarding the result of
2 the investigation. Defendant Marmon spoke to Plaintiff Pacheco briefly for approximately
3 five minutes and told him that the "evidence suggests" that Plaintiff Pacheco violated a
4 company policy. Defendant Marmon did not explain further and handed documents,
5 including a termination letter, to Plaintiff Pacheco for signature. Plaintiff Pacheco refused
6 to sign his termination letter because Defendant Marmon did not explain how the result
7 was reached. Plaintiff Pacheco believes that Defendants did not conduct a serious
8 investigation.

9 f. On or around June 1, 2021, Plaintiff Pacheco was called into work again and
10 met with Defendant Flores this time. Defendant Flores informed him that he was being
11 officially terminated and presented him with the termination paperwork again. Plaintiff
12 Pacheco refused to sign the paperwork because his questions regarding the investigation
13 were still not being answered. Plaintiff Pacheco believes that Defendant Costco
14 discriminated against his gender and terminated him instead of conducting a real
15 investigation. Plaintiff Pacheco was discriminated against for his gender due to the
16 political climate and "me too" movement. Plaintiff Pacheco believes Defendants
17 automatically chose the females' side without considering his explanation of events
18 because of his gender. As a result, Plaintiff Pacheco was wrongfully terminated.

19 g. Plaintiff was subject to Defendant Costco's corporate practices mandated by
20 corporate offices of Defendant Costco who at times altered the time records of employees,
21 failed to provide coverage during rest periods, did not allow rest breaks, and thus required
22 employees, particularly Plaintiff, to work during rest breaks, and failed to provide accurate
23 information on paycheck stubs in violation of Labor Code Section 226(a). Plaintiff was
24 forced to miss his breaks several times. Plaintiff was not provided a 10-minute rest break
25 within the first four hours, or major fraction thereof. Plaintiff Pacheco was constantly busy
26 adhering to the high-quality standards in place to serve Defendant Costco's customers. On
27 approximately 25 occasions, he was forced to forgo his last 15-minute rest break that he
28 was entitled to per Defendant Costco's policies and the Labor Code. When Plaintiff

1 Pacheco was finally able to check the time, he often realized he had missed his break.
2 Defendants did not allow Plaintiff Pacheco to take a break if it meant working overtime,
3 so he was often denied his break altogether. Plaintiff Pacheco is entitled to approximately
4 25 hours of pay for each violation as the statute requires. Plaintiff was subject to the
5 corporate policy and/or practices of not providing rest breaks and not being paid the
6 applicable penalties for rest period violations, all of which are unpaid and still owed to
7 Plaintiff.

8 h. Plaintiff Pacheco believes and alleges that Defendants' true reasons for
9 terminating his employment were his sex/gender and whistleblowing. Defendants failed
10 to pay Plaintiff Pacheco all wages owed at the time of his termination. Plaintiff Pacheco
11 further believes that Defendants terminated Plaintiff Pacheco in order to avoid
12 contributing to his health insurance premiums. Further, Defendants Costco, Marmon,
13 Flores, and Alamilla participated in wage theft from their employees, in which they
14 blatantly violated wage and hour laws by requiring employees to work 8-hour shifts
15 without the proper rest and meal breaks. Defendants failed to pay all wages due to Plaintiff
16 Pacheco for the wage theft that was committed by Defendants and their agents. Plaintiff
17 Pacheco's protected class and activities were all substantial motivating factors for his
18 wrongful termination.

19 78. Defendants' actions described above were outside the normal part of the
20 employment environment. Plaintiff could not expect that discrimination, harassment, and
21 retaliation based on sex/gender and whistleblowing to be part of his normal employment
22 environment.

23 79. Defendants had the intention of causing and/or recklessly disregarding the
24 probability of causing emotional distress to Plaintiff and did, in fact, cause emotional
25 distress to Plaintiff. Defendants' misconduct caused Plaintiff severe emotional distress,
26 including, but not limited to, humiliation, depression and anxiety.

27 80. As a proximate result of Defendants' extreme and outrageous conduct, Plaintiff
28 has suffered and continues to suffer severe emotional distress. Plaintiff has sustained and

1 continues to sustain substantial losses of earnings, retirement benefits, and other
2 employment benefits as a result of being emotionally distressed.

3 81. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
4 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
5 seek leave of court to amend this Complaint when the amounts are fully known.

6 82. Defendants' intentional infliction of emotional distress of Plaintiff entitles
7 Plaintiff to punitive damages.

8 9 **EIGHTH CAUSE OF ACTION**

10 **Failure to Provide Compensation to Employees Not Authorized or Permitted to** 11 **Take Required Rest Periods** 12 **(Labor Code §226.7)**

13 **Against All Defendants and DOES 1 to 100, Inclusive**

14 83. The allegations set forth in paragraphs 1 through 82 are re-alleged and incorpo-
15 rated herein by reference.

16 84. Section 2 of IWC Order 5-2001, provides in relevant part: "... (F) 'Employee'
17 means any person employed by an employer... (H) 'Employer' means any person as
18 defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent
19 or any other person, employs or exercises control over the wages, hours, or working
20 conditions of any person... (P) 'Public Housekeeping Industry' means any industry,
21 business, or establishment which provides... (1) lunch counters, cafeterias,... and all
22 similar establishments where food in either solid or liquid form is prepared and served to
23 be consumed on the premises."

24 85. At all times relevant hereto, Plaintiff was an "employee" as defined in Section
25 2(F) of IWC Order 5-2001, because Plaintiff was a person employed by Defendant
26 employers.

27 86. At all times relevant hereto, Defendants were the "employer" as defined in
28 Section 2(H) of IWC Order 5-2001, because Defendants are each a person, association,

1 organization, partnership, business trust, limited liability company, or corporation who
 2 directly or indirectly, or through an agent or any other person, employs or exercises control
 3 over wages, hours, or working conditions of any person.

4 87. At all times relevant hereto, Plaintiff was employed in the "Public Housekeeping
 5 Industry" as defined in Section 2(P) of IWC Order 5-2001.

6 88. Section 12(A) of IWC Order 5-2001, provides: "Every employer shall authorize
 7 and permit all employees to take rest periods, which insofar as practicable shall be in the
 8 middle of each work period. The authorized rest period time shall be based on the total
 9 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
 10 fraction thereof. However, a rest period need not be authorized for employees whose total
 11 daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time
 12 shall be counted as hours worked for which there shall be no deduction from wages."

13 89. Section 12(B) of IWC Order 5-2001 provides "If an employer fails to provide an
 14 employee a rest period in accordance with the applicable provisions of this order, the
 15 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
 16 compensation for each workday that the rest period is not provided."

17 90. Labor Code Section 226.7 provides: "(a) No employer shall require any
 18 employee to work during any meal or rest period mandated by an applicable order of the
 19 Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal
 20 period or rest period in accordance with an applicable order of the Industrial Welfare
 21 Commission, the employer shall pay the employee one additional hour of pay at the
 22 employee's regular rate of compensation for each work day that the meal or rest period is
 23 not provided."

24 91. At all times relevant hereto, Defendants failed to comply with Section 12 of IWC
 25 Order 5-2001, by failing to authorize and permit Plaintiff to take required rest periods. On
 26 approximately 25 occasions, he was forced to forgo his last 15-minute rest break that he
 27 was entitled to per Defendant Costco's policies and the Labor Code. When Plaintiff
 28 Pacheco was finally able to check the time, he often realized he had missed his break.

1 Defendants did not allow Plaintiff Pacheco to take a break if it meant working overtime,
 2 so he was often denied his break altogether. Plaintiff Pacheco is entitled to approximately
 3 25 hours of pay for each violation as the statute requires. Plaintiff was subject to the
 4 corporate policy and/or practices of not providing rest breaks and not being paid the
 5 applicable penalties for rest period violations, all of which are unpaid and still owed to
 6 Plaintiff.

7 92. WHEREFORE, Plaintiff requests relief as hereinafter provided.

8
 9 **NINTH CAUSE OF ACTION**

10 **Failure to Pay Wages Upon Discharge**

11 **(Labor Code §201)**

12 **Against Defendant Costco Wholesale Corporation and DOES 1 to 100, Inclusive**

13 93. The allegations set forth in paragraphs 1 through 92 are re-alleged and incorpo-
 14 rated herein by reference.

15 94. Pursuant to California Labor Code section 201, on Plaintiff's employment
 16 termination date, Defendants were required to pay Plaintiff all earned wages. At the time
 17 of Plaintiff's termination, he had unpaid wages. In violation of Labor Code section 201,
 18 Defendants failed to pay Plaintiff all wages due and owing, in amounts to be proven at the
 19 time of trial.

20 95. Plaintiff Pacheco was subject to Defendant Costco's corporate practices who at
 21 times altered the time records of employees, failed to provide coverage during meal and
 22 rest periods, did not allow meal and rest breaks, required employees to work during meal
 23 and rest breaks, and failed to provide accurate information on paycheck stubs in violation
 24 of Labor Code Section 226(a). Plaintiff was forced to miss his breaks several times.
 25 Plaintiff was not provided a 10-minute rest break within the first four hours, or major
 26 fraction thereof. Plaintiff Pacheco was constantly busy adhering to the high-quality
 27 standards in place to serve Defendant Costco's customers. On approximately 25
 28 occasions, he was forced to forgo his last 15-minute rest break that he was entitled to per

1 Defendant Costco's policies and the Labor Code. When Plaintiff Pacheco was finally able
 2 to check the time, he often realized he had missed his break. Defendants did not allow
 3 Plaintiff Pacheco to take a break if it meant working overtime, so he was often denied his
 4 break altogether. Plaintiff Pacheco is entitled to approximately 25 hours of pay for each
 5 violation as the statute requires. Plaintiff was subject to the corporate policy and/or
 6 practices of not providing rest breaks and not being paid the applicable penalties for rest
 7 period violations, all of which are unpaid and still owed to Plaintiff.

8 96. Defendants Costco, Marmon, Flores, and Alamilla's failure to pay Plaintiff the
 9 wages due and owing his was willful and done with the wrongful and deliberate intention
 10 of injuring Plaintiff, from improper motives amounting to malice, and in conscious
 11 disregard of Plaintiff's rights.

12 97. Defendants Costco, Marmon, Flores, and Alamilla's willful failure to pay
 13 Plaintiff the wages due and owing to him constitutes violations of Labor Code sections
 14 201 and 203, which provide that an employee's wages will continue as penalty for up to
 15 thirty (30) days from the time the wages are due. Therefore, Plaintiff is entitled to statutory
 16 penalties pursuant to Labor Code section 203.

17 98. Pursuant to Labor Code section 218.5, Plaintiff is also entitled to an award of
 18 reasonable attorneys' fees, expenses, and costs incurred in this action.

19 20 **TENTH CAUSE OF ACTION**

21 **Statutory Penalties**

22 **(Labor Code §§201, 203, 292)**

23 **Against Defendant Costco Wholesale Corporation and DOES 1 to 100, Inclusive**

24 99. The allegations set forth in paragraphs 1 through 98 are re-alleged and incorpo-
 25 rated herein by reference.

26 100. Labor Code section 201 provides, in relevant part: "(a) If an employer discharges
 27 an employee, the wages earned and unpaid at the time of discharge are due and payable
 28 immediately."

1 101. Labor Code section 203 provides: "If an employer willfully fails to pay, without
2 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any
3 wages of an employee who is discharged or who quits, the wages of the employee shall
4 continue as a penalty from the due date thereof at the same rate until paid or until an action
5 therefore is commenced; but the wages shall not continue for than 30 days. An employee
6 who secretes or absents himself or herself to avoid payment to them or his, or who refuses
7 to receive the payment when fully tendered to them or his, including any penalty then
8 accrued under this section, is not entitled to any benefit under this section for the time
9 during which he or she so avoids payment. Suit may be filed for these penalties at any
10 time before the expiration of the statute of limitations on an action for the wages from
11 which the penalties arise."

12 102. By willfully failing to pay its separated employees the amounts owed pursuant to
13 paragraphs 148, 149 and 150 above, in a timely manner, as required by Labor Code
14 sections 201 and 292, Defendants are liable for statutory penalties pursuant to Labor Code
15 section 203, in an amount equal to thirty days of the employee's per diem wage rate. These
16 statutory penalties, in a sum to be proven at trial, are owed and unpaid.

17 103. Labor Code section 558 provides:

18 "(a) Any employer or other person acting on behalf of an employer who
19 violates, or causes to be violated, a section of this chapter of any provision
20 regulating hours and days of work in any order of the Industrial Welfare
21 Commission shall be subject to a civil penalty as follows:

22 (1) For any initial violation, fifty dollars (\$50) for each underpaid
23 employee for each pay period for which the employee was underpaid
24 in addition to an amount sufficient to recover underpaid wages.

25 (2) For each subsequent violation, one hundred dollars (\$100) for
26 each underpaid employee for each pay period for which the employee
27 was underpaid in addition to an amount sufficient to recover underpaid
28 wages."

1 104. Because they violated the orders of the Industrial Welfare Commission referred
2 to therein, Defendants are liable for statutory penalties pursuant to Labor Code section
3 558, in a sum to proven at trial.

4 105. WHEREFORE, Plaintiff requests relief as hereinafter provided.

5
6 **PRAYER**

7 WHEREFORE, Plaintiff, Luis Pacheco, prays for judgment against Defendant(s) as
8 follows:

- 9 1. For general and special damages according to proof;
10 2. For exemplary damages, according to proof;
11 3. For pre-judgment and post-judgment interest on all damages awarded;
12 4. For reasonable attorneys' fees;
13 5. For costs of suit incurred;
14 6. For such other and further relief as the Court may deem just and proper.

15
16 ADDITIONALLY, Plaintiff, Luis Pacheco, demands trial of this matter by jury. The
17 amount demanded exceeds \$25,000 (Cal. Govt. Code Section 72055).

18
19 Dated: March 29, 2022

THE TRAN FIRM, APLC

20
21 By: 

Derek T. Tran, Esq.
Jorge A. Guardado, Esq.

22
23 Attorneys for Plaintiff,
24 LUIS PACHECO
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27
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